

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DOMINIC GABRIEL MAZZUCCO,

Petitioner,

v.

Case No. 24-CV-654

WARDEN STEVEN R JOHNSON,

Respondent.

**ORDER AND RECOMMENDATION ON THE PETITION FOR A WRIT
OF HABEAS CORPUS**

Dominic Gabriel Mazzucco, who is incarcerated pursuant to the judgment of a Wisconsin Circuit Court, filed a petition for a writ of habeas corpus. He seeks leave to proceed without prepayment of the \$5.00 filing fee. Based on the court's review of his affidavit and trust account statement, the court finds that he is unable to pay the fee. Therefore, his motion will be granted.

The court must next turn to whether Mazzucco's petition is sufficient to proceed.

Rule 4 of the Rules Governing Section 2254 Cases states:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an

answer, motion, or other response within a fixed time, or to take other action the judge may order.

Mazzucco has not exhausted his remedies in state court. He did not pursue a direct appeal. He states that he attempted to raise his claims in state court, but his motion was ignored. (ECF No. 1 at 5.) However, the state court docket, *see State v. Mazzucco*, Dodge County Case No. 2018CF251, available at <https://wcca.wicourts.gov>, states that a motion for post-conviction relief was filed on May 30, 2024, and a hearing is scheduled for July 2, 2024.

Because Mazzucco has failed to exhaust his state court remedies, *see* 28 U.S.C. § 2254(b)(1)(A), and there is no reason to suspect that any exception to the exhaustion doctrine may apply, *see* 28 U.S.C. § 2254(b)(1)(B), the court will recommend that his petition be dismissed without prejudice.

Finally, the court notes that Mazzucco asks that the court award him \$4,999,999.00 “and a dismissal and expungement of this aforementioned case.” (ECF No. 1 at 12.) The only remedy available under 28 U.S.C. § 2254 is release from custody. Monetary relief is available only through a civil suit. Mazzucco states that he has already unsuccessfully pursued a civil rights action. (ECF No. 1 at 9-10.) Nonetheless, the court must advise him that, if this is the relief he seeks, he will not obtain it through a habeas petition.

IT IS THEREFORE ORDERED that Mazzucco’s motion to proceed without prepayment of the filing fee (ECF No. 3) is granted.

IT IS FURTHER RECOMMENDED that his petition and this action be dismissed without prejudice.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 636(b)(1)(B) and (C) and Fed. R. Civ. P. 72(b)(2), any written objections to any recommendation herein or part thereof shall be filed within fourteen days of service of this recommendation. Failure to timely object waives a party's right to review.

Dated at Milwaukee, Wisconsin this 1st day of July, 2024.


WILLIAM E. DUFFIN
U.S. Magistrate Judge